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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,889	03/22/2002	Atsuhiro Nagayoshi	GK-HIK-2006/500572.20049	5001
26418	7590	05/03/2004	EXAMINER	
REED SMITH, LLP ATTN: PATENT RECORDS DEPARTMENT 599 LEXINGTON AVENUE, 29TH FLOOR NEW YORK, NY 10022-7650			LAUCHMAN, LAYLA G	
			ART UNIT	PAPER NUMBER
			2877	

DATE MAILED: 05/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/088,889	Applicant(s) NAGAYOSHI ET AL.	
	Examiner L. G. Lauchman	Art Unit 2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16 and 18 is/are rejected.
- 7) ☐ Claim(s) 15 and 17 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>04/07/2003</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 10-14, 16, 18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 5, 7 of U.S. Patent No. 6,657, 722 in view of Maeda Hiroshi et al (JP 06288903).

As to Claim 10, Claim 1 of the patent '722 discloses a side multi-lamp type on-line inside quality inspecting device, comprising:

transport means (col. 22, lines 38-39),

a transmission light passage (col. 23, lines 1-3),

light projecting means... (col. 22, lines 39-40),

light receiving means... (col. 22, lines 49-51),

means for making spectral analysis... (col. 22, lines 55-57),

said light projecting means having a large number of light projecting means...
(col. 22, lines 40-41),

said light receiving means having a condenser lens ... (col. 22, lines 60-64),
and a spectrometer (col. 23, lines 4-9).

Claim 10 does not specifically disclose a light blocking receiving seat.... to engage the object in a tight contact with the light passage. The Japanese application '903 teaches a system for inspecting internal quality of vegetable in fruits comprising a tray 1 (see Fig. 1), which is in a tight contact with the fruit 20 and the passage 3. It would have been obvious to one skilled in the art to have a tray or a receiving seat in the invention of Claim 10 of the patent '722, since it would provide transmission of the light coming through the inside of the object of inspection, and would prevent the ambient light from being detected by the spectrometer.

As to the combining mount, it appears that the combining mount of Claim 10 performs the same function as a dark box in Claim 1 of the patent '722 (see col. 23, lines 3-8).

As to Claims 11, 12, and 14, Claim 1 of the patent '722 teaches all as applied to Claim 10 above, and in addition the combining mount is arranged to have the entrance plane of an optical fiber at the focal point of said condenser lens and to lead the converged transmission light to the spectrometer, and the transmission light shutter is arranged in the receiving optical part (see col. 23, lines 1-14).

As to Claim 13, Claim 7 of the patent '722 teaches all as applied to Claim 10 above, and in addition the light coming to spectrometer is arranged to be reducible by arranging means for selectively inserting light reducing filters ... (see col. 24, lines 42-50).

As to Claim 16, Claim 2 of the patent '722 teaches all as applied to Claim 10 above, and in addition a white-level calibrating plate.... (col. 23, lines 15-24).

As to Claim 18, Claim 1 of the patent '722 teaches all as applied to Claim 10 above, except for a light-blocking device arranged in front of the light projecting means. The Japanese Application '903 teaches cut-off filters 5 arranged in front of the radiation lamps in order to stop the radiation unnecessary for the measurement. It would have been obvious to one skilled in the art to use the cut-off filters or blocking devices in the apparatus of Claim 1 of the patent '722 since the blocking device would protect the object to be measured from excessive radiation when the measurements are not taken.

Allowable Subject Matter

Claims 15, 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: As to Claim 15, the prior art of record taken along or in combination, fails to disclose or render obvious dust-proof means arranged on the outside of said transparent glass to blow air from the periphery thereof toward the center of said light receiving window, in combination with the rest of the limitations of the claim and claim 10.

As to Claim 17, the prior art of record taken along or in combination, fails to disclose or render obvious means for decreasing or increasing the quantity of light

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projected by said large number of light projecting lamps of said projecting means by increasing or decreasing a number of light projecting lamps according to the size of the inspecting object, in combination with the rest of the limitations of claim 10.

Conclusion

Papers related to this application may be submitted to Technology Center 2800 by facsimile transmission. Papers should be faxed to TC 2877 via the PTO Fax Center located in CP4-4C23. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CP4 Fax Center number is (703) 872-9306.

If the Applicant wishes to send a Fax dealing with either a Proposed Amendment or for discussion for a phone interview then the fax should:

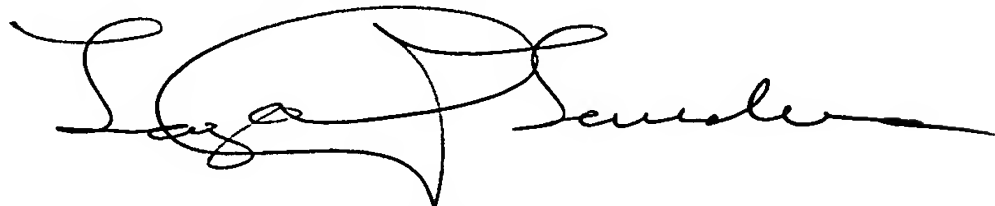
a) Contain either the statement "DRAFT" or "PROPOSED AMENDMENT" on the Fax Cover Sheet; and

b) Should be unsigned by the attorney or agent.

This will ensure that it will not be entered into the case and will be forwarded to the examiner as quickly as possible.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to L. G. Lauchman whose telephone number is (571) 272-2418.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC receptionist whose telephone number is (571) 272-1562.

A handwritten signature in black ink, appearing to read 'L. G. Lauchman', with a stylized, flowing script.

L. G. Lauchman
Patent Examiner
Art Unit 2877
April 26, 2004